

AAA Alternator Rebuilders, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 10-CA-25447-1, -2

October 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On August 22, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 10-RC-14035. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On October 2, 1991, the General Counsel filed a Motion for Summary Judgment. On October 8, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 22, 1991, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits its refusal to bargain and to furnish information, but challenges the validity of the Union's certification on the ground that the election was held in an inappropriate unit, i.e., at the employer's Field Street, Atlanta, Georgia facility on the eve of the facility's closure. In addition, the Respondent asserts that the information requested by the Union is insufficiently described and is overly broad, and is therefore not relevant or required for collective bargaining.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also reject the Respondent's assertion that the information requested by the Union is not relevant or

required for collective bargaining. The Union's letter requesting information stated in relevant part as follows:

At this time we would like to request certain preliminary data relative to the IAM bargaining unit which the Union feels is essential to bargain intelligently on the issue of wages and working conditions in the forthcoming negotiations. Specifically, the Union is asking for the data outlined below:

1. A detailed breakdown of aggregate, total employment costs for bargaining unit employees for the most recent annual period prior to contract expiration for which data is available, as well as the most recent 26-week period, showing:

(A) Straight time pay.

(B) Any differentials (i.e., evening and night, by shift; overtime premium, broken down by premium rate paid, if possible).

(C) Pay for time not worked broken down by item, (i.e., vacations, holidays, jury duty, sick leave, bereavement, etc.).

(D) All payments outside the payroll (i.e., pensions, death benefits, severance, SUB, life insurance, basic health insurance, major medical insurance, dental, prescription, eye coverage, etc.).

If possible, this data should be provided both on the aggregate annual and quarterly basis and on an average weekly basis, and on a per hour actually worked basis.

2. Hours information is needed by the following breakdown:

(A) Aggregate hours worked.

(B) Aggregate hours paid.

(C) Aggregate overtime hours.

(D) Average weekly hours paid.

(E) Average weekly overtime hours (broken down by premium rate paid, (i.e., time and one-half, double time, etc.).

(F) Average weekly hours paid for but not worked.

(G) Average weekly hours worked.

3. Breakdown of bargaining unit employees by occupation, showing the number of each wage step and the average wage for the occupation (data should be within most recent quarter, if possible).

4. A current service, age, sex, and earnings distribution of employees, including the overall current average age and average length of service of employees.

5. A current breakdown of employees by shift, and average basic earnings by shift.

6. With regard to the various insurance and medical benefits plans, the Union is requesting, for the most recent available monthly period, certain information. Specifically, the Union wants to know the number of employees covered (both active and retired), the number of dependents covered, as well as the "premium" for each group for each of the following benefits: Life Insurance, AD&D Weekly Sickness and Accident, Medical Expense Insurance (daily hospital, miscellaneous expenses, outpatient care, maternity, surgical, in-hospital doctors calls, X-ray and lab fees, major medical, etc.).

7. The following information for each pension plan, based upon the latest actuarial projection for the current year:

(A) The number of covered employees for which the projection was made.

(B) The annual cost.

(C) The total accrued liability to the date of projection, including the:

(1) Liability for retired pensioners.

(2) Liability for vested termination.

(3) Balance of accrued liability for active employees.

(D) Total unfunded past service liability.

(E) Period of amortization of unpaid past service liability.

(F) Annual payment on past service liability.

(G) Current value of total assets of the fund used in the projection.

(H) Statement of assumption used, including:

(1) Interest.

(2) Average effective age of retirement.

(3) Method of computation of liability.

(4) Earnings progression.

(5) Rates of turnover.

(6) Mortality.

8. With regard to the Pension Fund, itself:

(A) A list of the investments of the fund.

(B) The earnings of each investment.

(C) The original purchase price and current market value of each investment.

(D) The identity of firms managing the fund and fees paid to such managers.

(E) The relationship between the firms managing the funds and the employer.

(F) The relationship between the firm managing the funds and those financial institution that service the employer.

(G) An itemized breakdown of the cost of administering the fund.

(H) Instructions trustees have given to investment managers.

(I) How stock voting rights have been exercised.

Contrary to the Respondent, we find that the foregoing information is sufficiently described. Further, it is well-established that such information is presumptively relevant and must be furnished on request.¹

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Georgia corporation, with an office and place of business located at Atlanta, Georgia, where it is engaged in the remanufacture of automotive alternators and starters. During the calendar year preceding issuance of the complaint, the Respondent purchased and received at its Atlanta, Georgia facility materials and supplies valued in excess of \$50,000 directly from suppliers located outside the State of Georgia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held September 7, 1990, the Union was certified on February 7, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production, maintenance, warehouse and plant clerical employees employed at the Respondent's metropolitan Atlanta, Georgia facilities, excluding all office clerical employees, guards and supervisors as defined in the Act.

¹ See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); *Mobay Chemical Corp.*, 233 NLRB 109 (1977). Contrary to the Respondent's contention, we find that the Union's request is limited to information regarding bargaining unit employees. The Union's letter begins by requesting "certain preliminary data relative to the IAM bargaining unit" (emphasis added), and expressly states with respect to some of the specific information outlined thereafter that only information regarding "bargaining unit employees" is being sought. In any event, even assuming arguendo that the Union's request is ambiguous and/or overbroad to the extent that some of the specifically outlined information is not expressly limited to bargaining unit employees, this would not excuse the Respondent's blanket refusal to provide any of the information requested by the Union. See *Keauhou Beach Hotel*, 298 NLRB 702 (1990), and cases cited there.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since on or about April 25, 1991, the Union has requested the Respondent to bargain and to furnish information, and, since on or about the same day, including specifically by letter dated May 14, 1991, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after April 25, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, AAA Alternator Rebuilders, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production, maintenance, warehouse and plant clerical employees employed at the Respondent's metropolitan Atlanta, Georgia facilities, excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Atlanta, Georgia,² copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² We take official notice that the record in the underlying representation case indicates that the Respondent completed moving its operation from its Field Street, Atlanta, Georgia facilities to a single facility on Koppers Road in Rex, Georgia, on November 20, 1990. Accordingly, the Respondent is also ordered to post copies of the attached notice at its facility in Rex, Georgia.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant

and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production, maintenance, warehouse and plant clerical employees employed at the Respondent's metropolitan Atlanta, Georgia facilities, excluding all office clerical employees, guards and supervisors as defined in the Act.

AAA ALTERNATOR REBUILDERS, INC.